

NEW JERSEY BOARD OF PUBLIC UTILITIES

N.J.A.C. 14:10-11

TELECOMMUNICATIONS PROVIDERS

(also known as "Slamming rules")

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14:10-11.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Agent" means any person or entity, including, but not limited to, employees, servants or marketers, acting on behalf of a TSP in order to bring about, modify, affect performance of, or terminate mutual obligations between a TSP and the customer.

"Authorized Carrier" means any telecommunications carrier that submits a change on behalf of a subscriber in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this subchapter.

"Board" means the New Jersey Board of Public Utilities.

"Commission" means the Federal Communications Commission.

"Customer" means any one of the following:

- 1) the party identified in the account records of the TSP as responsible for payment of the telephone bill;
- 2) any adult person (over the age of 18) authorized by such party to change telecommunications services or to charge services to the account; or
- 3) any adult person contractually or otherwise lawfully authorized to represent such party.

"Division" means the Division of Consumer Affairs within the New Jersey Department of Law and Public Safety.

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"Executing TSP" means any TSP that affects a request that a customer's telecommunications carrier be changed. Any carrier may be treated as an executing carrier, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations it will consider in violation of this subchapter.

"InterLATA telecommunications service" means telecommunications service which originates in one LATA and terminates in a different LATA.

"IntraLATA telecommunications service" means telecommunications service which originates and terminates within the same LATA.

"Intrastate telecommunications service" means a telecommunications service which remains within the boundaries of New Jersey, regardless of the specific routing of the call.

"Local access and transport area" or "LATA" means a geographic area which marks the boundaries beyond which a Bell Operating Company does not carry telephone calls. See *United States v. Western Electric*, 569 F. Supp. 990 (D.D.C. 1983).

"Local exchange telecommunications service" means telecommunications service which originates and terminates within a geographic area established and described by a local exchange carrier's tariffs filed with the Board of Public Utilities.

"Primary TSP" means the customer's chosen provider of a telecommunications service for which there are multiple providers. To the extent permitted by statute, rule or Board order, a customer may select a primary TSP for intrastate interLATA, intraLATA toll and local exchange telecommunications services, and may select the same or different TSP for each type of service.

"Slamming" means an unauthorized change of a customer's primary TSP or the failure to execute an authorized change in a customer's primary TSP.

"Soliciting telecommunications service provider" means a telecommunications service provider that seeks, either directly or through an agent, a customer's authorization to terminate said customer's existing primary TSP and subsequently transfer the customer to the soliciting TSP.

"Submitting TSP" means any TSP that:

1. Requests on the behalf of a customer to change the primary TSP; and
2. Seeks to provide retail services to the end user customer.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telecommunications service provider" or "TSP" means any individual, firm, joint venture, partnership, corporation, association, public utility, cooperative association, joint stock association and includes any trustee, receiver, assignee, or representative which is a provider of intrastate telecommunications services, whether interLATA, intraLATA toll or local exchange telecommunications services, to an end-user customer. This term includes resellers, whether switched or switchless, of telecommunications services.

"Unauthorized change" means a change in a customer's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this subchapter.

14:10-11.2 Solicitation of customer's authorization for service termination and transfer

(a) All solicitations by a TSP or its agent for a customer's authorization to terminate that customer's existing primary TSP and to subsequently transfer said customer to a new primary TSP shall include a clear and conspicuous statement of the following:

1. That the solicitation seeks the customer's authorization to switch or change the customer's TSP from the primary TSP to the soliciting TSP; and
2. The soliciting TSP's current complete rates, fees, terms and conditions and information needed to assume accurate billing and TSP identification for the particular services proposed.

(b) No reseller of intrastate telecommunications services, or any agent acting on its behalf, shall disclose the identity of the underlying carrier whose telecommunications service is being resold, unless the information is provided in a truthful, non-misleading manner in accordance with this subchapter. The reseller shall identify itself as a reseller, disclose that it is not the current provider and advise the customer that accepting it as his or her carrier will change the customer's primary TSP.

14:10-11.3 Verification of change orders for telecommunications service providers

(a) No submitting TSP, or any person, firm or corporation acting as an agent or representative on behalf of such submitting TSP, shall submit to an executing TSP, or implement by itself, an order changing a customer's primary TSP unless and until the order has first been verified in accordance with this subchapter.

(b) Verification of any order changing a customer's primary TSP shall be in conformance with one of the following procedures as set forth in the Commission's rules at 47 C.F.R. §§64.1150 and 64.1160, as amended or supplemented, which regulations

are incorporated herein by reference, copies of which may be obtained upon request from the Secretary of the Board:

1. The submitting TSP has obtained the customer's written or electronically signed authorization in a form that satisfies the following requirements:
 - i. A TSP may use a letter of agency to obtain written or electronically signed authorization and or verification of a customer's request to change his/her primary TSP selection. A letter of agency that does not conform with this section is invalid for purposes of this subchapter;
 - ii. The letter of agency shall be a separate (or an easily separable) document or located on a separate screen or web page containing only the authorizing language described in (b) 1v below having the sole purpose of authorizing a TSP to initiate a primary TSP change. The letters of agency shall be signed and dated by the customer who subscribes to the telephone line(s) requesting the primary TSP change;
 - iii. The letter of agency shall not be combined on the same document, screen, or web page with inducements of any kind. For example, it cannot be used in combination with sweepstakes offerings, entries or boxes;
 - iv. Notwithstanding (b)1ii and iii above, the letter of agency may be combined with check(s) that contain only the required letter of agency language as prescribed in (b)1v below and the necessary information to make the check(s) a negotiable instrument. The letter of agency check(s) shall not contain any promotional language or material. The letter of agency check(s) shall contain, easily readable boldface type on the front of the check(s), a notice that the customer is authorizing a primary TSP change by cashing the check(s). The letter of agency language shall be placed near the signature line on the back of the check;
 - v. At a minimum, the letter of agency shall be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:
 - (1) The customer's billing name and address and each telephone number to be covered by the primary TSP change order;
 - (2) The decision to change the primary TSP from the current TSP to the submitting TSP;
 - (3) That the customer designates (name of submitting TSP) to act as the customer's agent for the primary TSP change;
 - (4) That the customer understands that a different TSP may be designated for each of the customer's services, that is, interLATA, intraLATA toll or local exchange. The letter of agency shall contain separate check-off boxes for each such choice, with only one signature line at the bottom, although a separate letter of agency for each choice is not necessary; and
 - (5) That the customer understands that each change of a primary TSP selection the customer chooses may involve a charge to the customer. The customer is to be advised of the amount of the charge up to the maximum;

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- vi. Any TSP designated in a letter of agency as a primary TSP shall be the TSP directly setting the rates for the customer;
 - vii. Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current TSP;
 - viii. If any portion of a letter of agency is translated into another language then all portions of the letter of agency shall be translated into that language. Every letter of agency shall be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency;
 - ix. Letters of agency submitted with an electronically signed authorization shall include the consumer disclosures required by §101(c) of the Electronic Signatures in the Global and National Commerce Act (Public Laws 106-229) (E-sign Act);
 - x. TSPs utilizing electronically signed letters of agency shall employ encryption and/or other security measures in keeping with the best practices used for Internet transactions. TSPs shall also provide notice to subscribers regarding the level of security that applies to the submission of such electronically signed letters of agency.
 - xi. A TSP shall submit a primary TSP change order on behalf of a subscriber within 60 days of obtaining a written or electronically signed letter of agency.
 - xii. Letters of agency submitted with electronically signed authorizations shall comply with all relevant provisions of the Electronic Signatures in the E- sign Act and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 et seq.
2. The submitting TSP has obtained the customer's electronic authorization to submit the primary TSP order. Such authorization shall be placed from the telephone number(s) on which the primary TSP is to be changed and shall confirm the information required in (b)1 above. Submitting TSP selecting to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) shall connect a customer to a voice response unit or similar mechanism that records the required information regarding the primary TSP change, including automatically recording the originating automatic numbering identification; or
3. An appropriately qualified independent third party has obtained the customer's oral authorization to submit the primary TSP change order which confirms and includes appropriate verification data (for example, the customer's date of birth or social security number). The independent third party shall not be owned, managed, controlled, or directed by the TSP or the TSP's marketing agent; shall not have any financial incentive to confirm primary TSP change orders for the TSP or the TSP's marketing agent; and shall operate in a location physically separate from the TSP or the TSP's marketing agent. The content of the verification shall include clear and conspicuous confirmation that the customer has authorized the primary TSP change.
- i. Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of subparagraphs (ii)-(iv) of this paragraph are satisfied.

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- ii. A TSP or a TSP's sales representative initiating a three-way conference call or a call through an automated verification system must drop off once the three-way connection has been established.
- iii. All third party verification methods shall elicit, at a minimum, the identity of the customer; confirmation that the person on the call is authorized to make the TSP change; confirmation that the person on the call wants to make the TSP change; the names of the TSPs affected by the change; the telephone numbers to be switched; and the types of service involved. Third party verifiers may not market the TSP's services by providing additional information, including information regarding preferred carrier freeze procedures.
- iv. All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with N.J.A.C.14:10-11.5 (d)1.i, submitting TSPs shall maintain and preserve audio records of verification of customer authorization for a minimum period of three years after obtaining such verification. Automated systems must provide customers with an option to speak with a live person at anytime during the call.

(c) The verification requirements of this subchapter apply to all primary TSP change requests, regardless of whether a request is initiated by the customer or the TSP, its agents or representatives.

(d) Each customer selection of a primary TSP for local, intraLATA toll, or interLATA telecommunications service shall be verified separately, in accordance with this subchapter, even if the same primary TSP is chosen to provide two or more telecommunications services.

(e) TSPs must provide customers the option of using one of the authorization and verification procedures specified in N.J.A.C. 14:10-11.3(b) in addition to an optional electronically signed authorization and verification procedure under N.J.A.C. 14:10-11.3(b)1.

(f) A TSP may acquire, through a sale or transfer, either part or all of another TSP's customer base without obtaining each customer's authorization and verification by complying with the Commission rules set forth at 47 C.F.R. §64.1120(e), as now constituted or as may hereafter be amended. Copies of letter notifications filed with the Commission pursuant to 47 C.F.R. §64.1120(e)(1) and (2) shall also be filed with the Board.

14:10-11.4 TSP change order procedures

(a) Notwithstanding the time frame for execution of primary TSP change orders set forth in this section, all primary TSP change orders solicited and verified in compliance with this subchapter shall be executed as soon as possible and without unreasonable delay.

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(b) Upon receipt of a primary TSP change order which complies with this subchapter, the executing TSP, person, firm or corporation acting as an agent or representative on behalf of a TSP, shall, on behalf of the customer, promptly and without unreasonable delay, process the TSP change order to assure that the order is completed and service can be provided by the submitting TSP no later than three business days for toll services, whether intraLATA or interLATA and no later than 30 business days for local exchange service. The 30 day period for completing local exchange service changes may be extended for good cause by the Board for an additional 30 day period, unless otherwise agreed to by the customer, or as agreed to by the TSPs involved in the change, or by Federal law or rule. The 30 day period may also be reduced by order of the Board pursuant to N.J.S.A. 56:8-88. The time interval for local exchange service order completion by Verizon New Jersey to the submitting TSP is set forth by Board approved New Jersey Carrier to Carrier Guidelines. (See I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services and I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket Nos. TX95120631 and TX98010010, May 25, 2000)

(c) When an authorized change of a TSP is made, the new TSP shall notify the new customer of the change within 30 days of submitting the primary TSP change order. The notice shall be separate from the primary TSP's billing statement and shall clearly and conspicuously include at least the following information:

1. That the information is being sent to confirm a primary telecommunications service provider change order placed by the customer and confirming the type of service being changed, that is, local, intraLATA or interLATA services;
2. The name of the customer's current telecommunications service provider, if that information is known to the new TSP;
3. The name of the newly requested telecommunications service provider with telephone number and address;
4. A description of any and all terms, conditions or charges that shall be incurred; and
5. The telephone number and address of both the Board of Public Utilities Division of Customer Relations, at Two Gateway Center, Newark, New Jersey 07102, 1 (800) 624-0241, and the Division of Consumer Affairs Consumer Service Center, at 124 Halsey Street 7th Fl, PO Box 45027, Newark, New Jersey (973) 504-6200.

(d) The TSP, or other person, firm or corporation acting as an agent or representative on behalf of a submitting TSP, shall make available to any customer, upon written or verbal request, for the period records are maintained, the TSPs verification of confirmation of that customer's TSP change order. However, in those instances where the customer is unable to obtain the verification from the submitting TSP, then the executing TSP will be required to provide it if such information is in its possession.

14:10-11.5 Unauthorized Service Termination and Transfer (slamming)

(a) Notwithstanding the time frame for execution of primary TSP change orders set forth in this section, all primary TSP change orders solicited and verified in compliance with this subchapter shall be executed as soon as possible and without unreasonable delay.

(b) Upon receipt of a primary TSP change order which complies with this subchapter, the executing TSP, person, firm or corporation acting as an agent or representative on behalf of a TSP, shall, on behalf of the customer, promptly and without unreasonable delay, process the TSP change order to assure that the order is completed and service can be provided by the submitting TSP no later than three business days for toll services, whether intraLATA or interLATA and no later than 30 business days for local exchange service. The 30 day period for completing local exchange service changes may be extended for good cause by the Board for an additional 30 day period, unless otherwise agreed to by the customer, or as agreed to by the TSPs involved in the change, or by Federal law or rule. The 30 day period may also be reduced by order of the Board pursuant to N.J.S.A. 56:8-88. The time interval for local exchange service order completion by Verizon New Jersey to the submitting TSP is set forth by Board approved New Jersey Carrier to Carrier Guidelines. (See I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services and I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket Nos. TX95120631 and TX98010010, May 25, 2000).

(c) When an authorized change of a TSP is made, the new TSP shall notify the new customer of the change within 30 days of submitting the primary TSP change order. The notice shall be separate from the primary TSP's billing statement and shall clearly and conspicuously include at least the following information:

1. That the information is being sent to confirm a primary telecommunications service provider change order placed by the customer and confirming the type of service being changed, that is, local, intraLATA or interLATA services;
2. The name of the customer's current telecommunications service provider, if that information is known to the new TSP;
3. The name of the newly requested telecommunications service provider with telephone number and address;
4. A description of any and all terms, conditions or charges that shall be incurred; and
5. The telephone number and address of both the Board of Public Utilities Division of Customer Relations, at Two Gateway Center, Newark, New Jersey 07102, 1 (800) 624-0241, and the Division of Consumer Affairs Consumer Service Center, at 124 Halsey Street 7th Fl, PO Box 45027, Newark, New Jersey (973) 504-6200.

(d) No submitting TSP shall submit a change on the behalf of a customer in the customer's selection of a TSP prior to obtaining authorization from the customer, and verification of that authorization in accordance with the procedures prescribed in N.J.A.C. 14:10-11.3. For a submitting TSP, compliance with the verification procedures prescribed in this subchapter shall be defined as compliance with this paragraph and

(d)2 below, as well as with N.J.A.C. 14:10-11.3. The submitting TSP shall maintain and preserve records of verification of customer authorization for a minimum period of three years after obtaining such verification. The record retention period provides customers three years within which to file a slamming complaint.

(e) Reimbursement procedures and TSP liability for slamming shall be in conformance with Commission rules at 47 C.F.R. §64.1140, and §64.1160 and 1170 as amended or supplemented, as follows:

1. Any submitting TSP that violates the procedures prescribed in this subsection shall be liable to the primary TSP in an amount equal to 150 percent of all charges paid to the submitting TSP by such customer after such violation, as well as for additional amounts as prescribed in (e)4 below. The remedies provided in this subsection are in addition to any other remedies available by law.
2. Any customer whose selection of a Primary TSP is changed without authorization verified in accordance with the procedures set forth in N.J.A.C. 14:10-11.3 is absolved from liability for charges as follows:
 - i. If the customer has not already paid charges to the unauthorized TSP, the customer is absolved of liability for charges imposed by the unauthorized TSP for service provided during the first 30 days after the unauthorized change. Upon being informed by a customer that an unauthorized change has occurred, the recipient of the call, i.e. the authorized carrier, the unauthorized TSP, or the executing TSP, shall inform the customer of this 30-day absolution period. Any charges imposed by the unauthorized TSP on the customer for service provided after this 30-day period shall be paid by the customer to the authorized TSP at the rates the customer was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of paragraph 3 (v) of this subchapter.
 - ii. If the customer has already paid charges to the unauthorized carrier, and the authorized TSP receives payment from the unauthorized TSP as provided for in paragraph 1 of this subsection, the authorized carrier shall refund or credit to the customer any amounts determined in accordance with the provisions of (e)4vi below.
 - iii. If the customer has been absolved of liability as prescribed by this subsection, the unauthorized TSP shall also be liable to the customer for any charge required to return the customer to his or her properly authorized carrier, if applicable.
3. Absolution procedures where the customer has not paid charges are as follows:
 - i. This paragraph shall only apply after a customer has **alleged** that an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred and the customer has not paid charges to the allegedly unauthorized TSP for service for 30 days, or a portion thereof, after the unauthorized change is alleged to have occurred.
 - ii. An allegedly unauthorized TSP shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change

- occurred, as defined by N.J.A.C. 14:10-11.1, from a customer's bill upon notification that such unauthorized change is alleged to have occurred.
- iii. An allegedly unauthorized TSP may challenge a customer's allegation that an unauthorized change as defined by N.J.A.C. 14:10-11.1 has occurred. An allegedly unauthorized TSP choosing to challenge such allegation shall immediately notify the complaining customer that: the unauthorized TSP is required to file the challenge with the Board within 30 days of the date of removal of charges from the complaining customer's bill in accordance with subsection (ii). The TSP, upon investigation, is required to provide the Board with the name, address, phone number of the customer, the date of the alleged slam, the name of the unauthorized TSP to which service was switched, the type of services that were switched, and any evidence to substantiate the TSP's position. The alleged unauthorized TSP may reinstate charges to a customer's bill which were removed pursuant to the provisions of subsection ii upon notice that an investigation was completed by the Division of Customer Assistance that determined the change was authorized.
 - iv. If it is determined after reasonable investigation that an unauthorized change, as defined by N.J.A.C. 14:10-11.1 has occurred, the Board or its designees will issue a notice indicating that the customer is entitled to absolution from the charges incurred during the first 30 days after the unauthorized TSP change occurred, and neither the authorized or unauthorized TSP may pursue any collection against the customer for those charges.
 - v. If the customer has incurred charges for services provided more than 30 days after the unauthorized TSP change, the unauthorized TSP must forward the billing information for such services to the authorized TSP, which may bill the customer for such services using either of the following means:
 - (1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized TSP would have charged the customer for the same services had an unauthorized change, as described in N.J.A.C. 14:10-11.1, not occurred; or
 - (2) The amount of the charge may be determined using a 50 percent proxy rate as follows: Upon receipt of billing information from the unauthorized TSP, the authorized TSP may bill the customer for 50 percent of the rate the unauthorized TSP would have charged the customer for the services provided. However, the customer shall have the right to reject use of this 50 percent proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in subparagraph (e)3v(1) above.
 - vi. If the unauthorized TSP received payment from the customer for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in this subsection shall apply to those payments.

- vii. If the Board or its designee determines after reasonable investigation that the TSP change was authorized, the TSP may re-bill the customer for charges incurred.
- 4. Reimbursement procedures where the customer has paid charges are as follows:
 - i. The procedures in this paragraph shall only apply after that an unauthorized change, as defined by N.J.A.C. 14:10-11.1 has occurred and the customer has paid charges to an allegedly unauthorized TSP.
 - ii. If the Board or its designees had determined after reasonable investigation that an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred, it shall issue a notice directing the unauthorized carrier to forward to the authorized TSP the following:
 - (1) An amount equal to 150 percent of all charges paid by the customer to the unauthorized TSP; and
 - (2) Copies of any telephone bills from the unauthorized carrier to the customer.
 - iii. A copy of the notice shall be sent to the customer, the unauthorized TSP, and the authorized TSP.
 - iv. Compliance with the above does not preclude the Board from seeking additional administrative remedies where deemed appropriate.
 - v. Within ten days of receipt of the amount provided for in subparagraph ii(1) of this paragraph, the authorized TSP shall provide a refund or credit to the customer in the amount of 50 percent of all charges paid by the customer to the unauthorized TSP. The customer has the option of asking the authorized TSP to re-rate the unauthorized carrier's charges based on the rates of the authorized TSP and, on behalf of the customer, seek an additional refund from the unauthorized TSP, to the extent that the re-rated amount exceeds the 50 percent of all charges paid by the customer to the unauthorized TSP. The authorized TSP shall also send notice to the Board Secretary and the Director of Customer Assistance that it has given a refund or credit to the customer.
 - vi. If an authorized TSP incurs billing and collection expenses in collecting charges from the unauthorized TSP, the unauthorized TSP shall reimburse the authorized TSP for reasonable expenses.
 - vii. If the authorized TSP has not received payment from the unauthorized TSP as required by subparagraph (e)4v of this paragraph, the authorized TSP is not required to provide any refund or credit to the customer. The authorized TSP must, within 45 days of receiving the notice or decision as described in subparagraph e(4)ii of this paragraph, inform the customer, and the Director of Customer Assistance if the unauthorized TSP has failed to forward to it the appropriate charges, and also inform the customer of his or her right to pursue a claim against the unauthorized TSP for a refund of all charges paid to the unauthorized TSP.
 - viii. Where possible, the properly authorized TSP must reinstate the customer in any premium program in which that customer was enrolled prior to the unauthorized change, if the customer's participation in that program was terminated because of the unauthorized change. If the customer has paid charges to the

unauthorized TSP, the properly authorized TSP shall also provide or restore to the customer any premiums to which the customer would have been entitled had the unauthorized change not occurred. The authorized TSP must comply with the requirements of this paragraph regardless of whether it is able to recover from the unauthorized TSP any charges that were paid by the customer.

(f) All investigation procedures are as follows:

1. When an executing or primary TSP is informed of an unauthorized TSP change by a customer, it must immediately notify both the authorized and allegedly unauthorized TSP of the incident. This notification must include the identity of both TSPs.
2. Any TSP, executing, authorized, or allegedly unauthorized, that is informed by a customer or an executing TSP of an unauthorized TSP change. The TSP can attempt to resolve the complaint to the satisfaction of the customer. If the TSP is unable to resolve the complaint the TSP must send the complaint to the Board. The complaint must include the name, address and telephone number of the customer; the date the alleged unauthorized switch occurred; and the name of the alleged unauthorized TSP to which the customer was switched; the type of service switched, and any evidence to substantiate the TSP's position. Nothing shall prevent an allegedly unauthorized TSP from resolving the complaint by providing the Customer with all relief to which the customer is entitled under this subchapter.
3. Upon receipt of an unauthorized TSP change complaint, the Board or its designee will notify the allegedly unauthorized TSP of the complaint and require the TSP to remove all unpaid charges for the first 30 days after the slam from the customer's bill pending a determination of whether an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred, if it has not already done so.
4. Not more than 30 days after notification of the complaint, the alleged unauthorized TSP shall provide to the Board or its designee a copy of any valid proof of verification of the TSP change. This proof of verification must contain clear and convincing evidence of a valid authorized TSP change, as that term is defined in this subchapter. The Board or its designee will determine whether an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred using such proof and any evidence supplied by the customer. Failure by the submitting TSP to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(g) Each TSP authorized to provide telecommunications services in New Jersey shall submit to the Division of Customer Assistance three copies of the slamming complaint report form identified in the subchapter Appendix, incorporated herein by reference.

1. By each March 1 the report shall cover the preceding period between July 1 and December 31. Each September 1 the report shall cover the preceding January 1 through June 30. Reporting shall commence on September 1, covering September 2, 2003 through June 30 of the following year. Reports filed on March 1, shall cover the period between July 1 and December 31.

2. Each TSP authorized to provide telecommunications services in New Jersey shall, upon request, submit to the Board and the Division three copies of a report of all slamming complaints received, and the resolution thereof indicating the customers' name, address, telephone number, the type of service that was slammed, and the submitting TSP or agent that requested the alleged unauthorized switch of the customer's primary TSP.

14:10-11.6 Primary TSP Freezes

(a) A primary TSP freeze prevents a change in a customer's primary TSP without the express consent of the customer.

(b) All TSP's responsible for implementing changes of primary TSPs shall be required to offer a plan to freeze and lift the freeze of the customer's local, intraLATA toll or interLATA primary TSPs upon the customer's request. TSPs shall adopt a primary TSP freeze plan which complies with this subchapter by August 18, 2000.

(c) Customer requests for the imposition or lifting of primary TSP freezes shall be honored without charge.

(d) All TSPs responsible for the imposition or lifting of primary TSP freezes shall comply with 47 C.F.R. §64.1190 as amended or supplemented, as follows:

1. A primary TSP freeze (or freeze) prevents a change in a customer's primary TSP selection unless the customer gives the TSP from whom the freeze was requested his or her express consent to make the switch. All TSPs responsible for the imposition or lifting of primary TSP freezes shall comply with the provisions of this section.
2. All TSPs responsible for the imposition or lifting of primary TSP freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's TSP selections.
3. Primary TSP freeze procedures, including any solicitation, shall clearly distinguish among telecommunications services (for example, local exchange, intraLATA toll, and interLATA toll) subject to a primary TSP freeze. The TSP offering the freeze shall obtain separate authorization for each service for which a primary TSP freeze is requested.
4. The following apply to solicitation and imposition of primary TSP freezes.
 - i. All TSP provided solicitation and other materials regarding primary TSP freezes shall include:
 - (1) An explanation, in clear and neutral language, of what a primary TSP freeze is and what services may be subject to a freeze; and
 - (2) A description of the specific procedures necessary to lift a primary TSP freeze; an explanation that these steps are in addition to the verification rules in N.J.A.C. 14:10-11.3 for changing a customer's primary TSP selections; and an explanation that the customer will be unable to make a change in TSP selection unless he or she lifts the freeze.
 - ii. No TSP responsible for the imposition or lifting of primary TSP freezes shall

implement a primary TSP freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of following procedures

- (1) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's written or electronically signed authorization in a form that meets the requirement of subsection (d)4iii below.
 - (2) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's electronic authorization, placed from the telephone number(s) on which the primary TSP freeze is to be imposed, to impose a primary TSP freeze. The electronic authorization shall confirm appropriate verification data (for example, the customer's date of birth or social security number) and the information required in (d)4iii(2)(A) through (D) below. TSPs electing to confirm primary TSP freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the primary TSP freeze request, including automatically recording the originating automatic numbering identification; or
 - (3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred TSP freeze and confirmed the appropriate verification data (for example, the customer's date of birth or social security number) and the information required in (d)4iii(2)(A) through (D) below. The independent third party shall not be owned, managed, or directly controlled by the TSP or the TSP's marketing agent; not have any financial incentive to confirm primary TSP freeze requests for the TSP or the TSP's marketing agent; and operate in a location physically separate from the TSP or the TSP's marketing agent. The content of the verification shall include clear and conspicuous confirmation that the customer has authorized a primary TSP freeze.
- iii. A TSP responsible for the imposition or lifting of primary TSP freezes may accept a customer's written or electronically signed authorization to impose a freeze on his or her primary TSP selection. Written authorization that does not conform with this section is invalid and shall not be used to impose a primary TSP freeze.
- (1) The written authorization shall comply with N.J.A.C. 14:10-11.3(b) 1ii, iii and viii concerning the form and content for letters of agency.
 - (2) At a minimum, the written authorization shall be printed with a readable type of sufficient size to be clearly legible and shall contain clear and unambiguous language that confirms:
 - (A) The customer's billing name and address and the telephone number(s) to be covered by the primary TSP freeze;
 - (B) The decision to place a primary TSP freeze on the telephone number(s) and particular service(s). The authorization shall contain separate statements regarding the particular selections (for example, for local exchange, intraLATA toll, and interLATA toll service) to be

- frozen;
 - (C) That the customer understands that she or he will be unable to make a change in TSP selection unless she or he lifts the primary TSP freeze for that particular service.
5. All TSPs responsible for the imposition or lifting of primary TSP freezes shall, at a minimum, offer customers the following procedures for lifting a primary TSP freeze:
- i. A TSP responsible for the imposition or lifting of primary TSP freezes shall accept a customer's written or electronically signed authorization stating her or his intent to lift a preferred TSP freeze; and
 - ii. A TSP responsible for the imposition or lifting of primary TSP freezes shall accept a customer's oral authorization stating her or his intent to lift a primary TSP freeze and shall offer a mechanism that allows a submitting TSP to conduct a three-way conference call with the TSP administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a primary TSP freeze, the TSP administering the freeze shall confirm appropriate verification data (for example, the customer's date of birth or social security number) and the customer's intent to lift the particular freeze for a particular service (for example, intraLATA, interLATA, local).

14:10-11.7 Investigations

- (a) The Board may investigate, upon its own initiative or upon complaint, any allegation of a violation of this subchapter.
- (b) The Board may compel the attendance of witnesses, compel the production of documents, and issue subpoenas in connection with any investigation of an alleged violation of this subchapter.

14:10-11.8 Penalties for violations

- (a) TSPs shall adhere to a standard of due care when submitting and processing changes of primary TSPs. Adherence to this standard means that the TSP has taken all reasonable steps necessary to ensure compliance with this subchapter. There shall be a rebuttable presumption that any violation of this standard is "willfull or intentional." The burden of proof shall be upon the submitting or executing TSP to rebut the presumption.
- (b) Any TSP determined by the Board, after notice and hearing, to have violated any rule, regulation or order adopted pursuant to P.L. 1998, c.82, or to have violated any Federal law or rules relating to changes in primary telecommunications service providers, shall be subject to any one or more of the following:
 - 1. Suspension or revocation of the TSP's authority to conduct business in the State;
 - 2. Civil penalties according to the following schedule:
 - i. A penalty not to exceed \$7,500 for the first violation; and

Note: This is a courtesy copy of the rules. The official version appeared in the New Jersey Register on September 2, 2003. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

- ii. A penalty not more than \$15,000 per violation for each subsequent violation associated with a specific access line; and
3. Such other remedies, including, but not limited to, the ordering of restitution to customers as the Board deems appropriate.

(c) In determining the remedies or penalties to be imposed, the Board shall consider: the nature, circumstances and the gravity of the violation; the degree of the TSP's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the TSP to conduct business; any good faith effort on the part of the TSP in attempting to achieve compliance; the TSP's ability to pay the penalty; and any other factors the Board determines to be appropriate. In the event the State owes money to the TSP, the amount of the penalty, when finally determined, may be deducted from any sums due and owing.

(d) All monies recovered from a civil or administrative penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

(e) In the event that the Board suspends or revokes the authority of a TSP to conduct business in this State, the TSP which controls access and/or the TSP responsible for call completion, shall immediately discontinue the revoked TSP's access to the facilities of any underlying TSP, and the TSP responsible for billing the customers of the revoked TSP shall notify each affected customer advising that each customer has 30 days to choose another TSP.

14:10-11.9 Scope of authority

The rights, remedies, and prohibitions accorded by the provisions of P.L. 1998, c.82 and this subchapter are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State and nothing contained in this subchapter shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition. Neither P.L. 1998, c.82, nor this subchapter, shall be construed in any way to limit the authority and power of the Attorney General and the Division to enforce any other sections of the Consumer Fraud Act, P.L. 1960, c.39 (N.J.S.A. 56:8-1 et seq.) or any other applicable law, rule or regulation in connection with the activities of telecommunications service providers, even if such activities involve slamming. Nothing in this subchapter shall be construed in any way to abrogate a customers private right of action, pursuant to N.J.S.A. 56:8-19.

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APPENDIX

New Jersey Board of Public Utilities
Division of Customer Assistance
TSP Slamming Activity Report

Name of Reporting TSP _____

Reporting Period _____

Number of Verified Slamming Complaints _____

Number of Verified Slamming Complaints Resolved with Customer _____

Total Number of Slamming Complaints Received by Reporting TSP Identified by Local,
Regional, or Long Distance TSP Name _____

Can attach a separate sheet of paper if necessary

Total Number of Customers Served by Reporting TSP _____